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THE PROVISO TO SEC. 47, INDIAN ARBITRATION ACT—A CASE FOR REPEAL

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There are two reasons why, the above provision of law should be repealed; firstly, because, it embodies a wrong principle of jurisprudence; and, secondly, even in so far as it goes, it is wholly innocuous and will fail to achieve the purpose it was intended to subserve.

To take the second reason, first: Section 47 of the Arbitration Act declares that all arbitrations, shall, subject to the provisions of section 46, be governed by the provisions of the Act. The proviso under notice engrafts an exception on this rule and states that notwithstanding the fact that the procedure laid down in the Act has not been followed, the Court may, still, "take into consideration" an arbitration award otherwise obtained, for the purpose of passing a decree within the meaning of rule 3 of Order 23 of the Code of Civil Procedure which was, obviously, in the mind of the draftsman. The proviso goes on to add a rider, *viz.*, that, in such cases, the consent of all the parties is necessary. Now, it is obvious that this requirement robs the exception of much of its utility. No party who is dissatisfied with the award can be expected to consent, and, if there is no unanimous consent, the Court will be powerless to act, however just it might consider the award to be. This is virtually to produce a stale-mate. If the Legislature was anxious to give due effect to awards, under whatever circumstances they might have been made, the only way of effectuating that object would have been to give the Court power to act under rule 3 of Order 23, if only, it was satisfied as to the desirability, thereof. So early as 1908, under similar circumstances, the Legislature solved a similar problem by enacting that consent of parties was not necessary to enable the Court to pass a decree on the basis of an adjustment; only, it had to be satisfied that there had been, *de facto*, an adjustment. This was, obviously, if one may say so, good sense and this put it out of the power of parties to resile from concluded agreements. This experience has been entirely ignored in the present proviso which as it stands

makes the Court powerless. It would be difficult to find any similar instance of such frustration of legislative effort. If the provision was to be effective, the words "with the consent of the parties" occurring in the section must have been omitted.

But, then, is that objective desirable?. This takes us to the first of the considerations adverted to. The principle contained in the proviso is not desirable, and, for the following reasons. It is true that arbitrations are no longer regarded by Courts with disfavour. As Lord Hailsham observes, in the course of his Foreword to Hogg on Arbitration, "....arbitration is now recognised and encouraged as a most valuable assistance to the Courts. Instead of prohibiting the practice of arbitrations, as attempts to oust the jurisdiction of the Court, the law has lent its sanction for the enforcement of awards and for the assistance of their procedure". It is enough to state that, under the English Law, the one principle that is emphasised, alike in the statute-law, as in the decisions of the Court is the supremacy of the King's Courts. Throughout all the legislative enactments in England, the Common Law Procedure Act of 1854, and the Arbitration Acts of 1889 and 1934, this principle is loudly proclaimed. Section 4 of the English Act of 1889, like its precursor, section 11 of the Common Law Procedure Act of 1854 emphasises this principle in unmistakable language. The high watermark is reached in the case of *Doleman* v. *Osset*[1]," where, in spite of some phrases of doubtful import employed by Farwell, L.J. the decision, itself leaves no doubt on the matter and was, in fact, assented to, even by Vaughan Williams, L.J. At page 269 of the report, Fletcher Moulton, L.J. observes, "There cannot be two tribunals each with jurisdiction to decide on the rights of the parties and compel them to accept its decision....there would be thus, a race....which should be the first to give its decision." Farwell, L.J. is even more emphatic. He says: "The King's Courts do not compete with arbitrators, or, permit their proceedings to be interfered with in any way by them." It will be permissible to add: "The King's Courts *do not care*, to compete" The latest trend of English authority is to be found in the case of *Pinnock & Bros* v. *Lewis & Peat, Ltd.*, a decision of Roche, J.[2] It is important to note that there is no authority in English Law which would countenance an award rendered *pendente lite,* on a reference made, also, pending action, and without the sanction of the Court.

The history of Indian Jurisprudence has, also, not been different. The earliest case of the Privy Council dealing with arbitrations is that in *Pestonjee Nussurwanjee* v. *Manockjee and Co.*[3]. It is true that in a very early Indian enactment —Bombay Regulation, VII of 1827—parties were enabled to enter into an arbitration agreement *pendente lite,* and without the intervention of the Court: see Section 1, clause 2. But, this heterodox doctrine was departed from, ever since the Civil Procedure Code of 1859, and has been rejected, down to the present Code. The Indian statute-law, like the English statute law does

1. (1912) 3 K.B. 257.
2. (1923) 1 K.B. 690.
3. (1868) 12 M.I.A. 112, 131.

not countenance attempts by parties to a litigation before Courts to enter into a private reference. The Indian Codes of 1859, 1882, and 1908, declare the supremacy of the established tribunals of the land and of their authority and power to have exclusive cognisance of all civil disputes between His Majesty's subjects, except, when declared, otherwise, by any other law: *See*. S. 9 of Act V of 1908. *See also* the Indian Arbitration Act of 1889.

Before the present Arbitration Act was enacted, there was a sharp difference of opinion between the Indian High Courts on the question whether the Court can recognise, under rule 3 of Order 23, of the Code, awards made, *pendente lite*, on a private reference also, entered *pendente lite*. The majority view, unfortunately, took the view that the Courts can; see *Chanbasappa* v. *Basalingayya*,[1] *Subbaraju* v. *Venkataramaraju*,[2] *Gajendra Singh* v. *Durgakunwar*[3]; contra, *Amar Chand Chamaraja* v. *Banwarilall Rakshit*[4].

In the proviso under notice, the Legislature has expressed agreement with the majority view. The writer has discussed, elsewhere, in detail, why the majority view is wrong[5]. The effect of the present proviso is to enable parties to set at naught, at their pleasure, the established tribunal of the land which has legitimate cognisance of their case and to erect, without permission, another "lay" tribunal with power to adjudicate on their rights, and, after that, to come to Court asking for its imprimatur on the award made under such singular circumstances.

It is enough to say in the words of Farwell, L.J. in *Doleman* v. *Osset*,[6] such a position is an "impossible one, inconsistent with the dignity of the Court." The present Act, itself, emphasises the principle of the supremacy of the King's Courts in a fasciculus of sections: *see* especially sections 34 and 35. Even the very proviso which makes such a disastrous concession, itself, gives the Court power to refuse its sanction even when all the parties consent. No citizen who is subject to the discipline of the Courts and *ex concessio*, has his case taken cognisance of by the Court can, after that event, be allowed to ignore it, for a moment, and, then, to come to it, again, for getting its seal of approval. The King's Courts ought not to be placed in so equivocal a position. And a provision of the statute which permits such a thing to be done has therefore to be abrogated. The whole scheme of the Indian law has been against such a position at least, ever since 1859. It was Rankin, C. J. who observed "Informal and uncontrolled arbitrations...are the very things which the II Schedule (of the Code) was intended to deliver litigants from", *see Amar Chand Chamaraja* v. *Banwari Lall Rakshit*[4].

These words strike a genuine note of jurisprudence and are worth pondering over. Will the Legislature reconsider the matter and repeal the Proviso?

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1. (1927) I.L.R. 51 Bom 908 (F.B.)
2. (1928) I.L.R. 51 M. 800 (F. B.)
3. (1925) 47 All. 637 (F.B.)
4. (1921) I.L.R. 49 Cal. 608.
5. *See* 65 M. L. J. Journal section, pp. 1-18.
6. (1912) 3 K.B. 257, 270—274.

SUMMARY OF ENGLISH CASES.

PLOMIEN FUEL ECONOMISER CO., LTD. *v.* NATIONAL MARKETING CO., (1941) 1 All. E. R. 311 (Ch. D.)

Evidence—Plaintiff's employee's 'proof' of evidence—Death of witness—Proof not admissible as witness was party interested.

A proof of evidence taken from an employee of the plaintiff while proceedings were pending, cannot on his death be admissible in evidence, as he was a party "interested" in the proceedings within the meaning of the Evidence Act, S. 1 (3).

DOLMAN *v.* HILLMAN LTD., (1941) 1 All. E. R. 355 (C. A.).

Tort—Nuisance—Butcher's shop adjoining highway—Piece of fat escaping on to pavement—Plaintiff slipping on it and injuring himself—Right to damages.

The plaintiff fell and was injured by slipping on a piece of fat on the pavement. The piece of fat in question came from the defendant's (a butcher's) shop. The piece of fat came there by jumping out on the pavement as the result of a chopping or slicing operation conducted inside the shop.

Held, that the defendants were guilty of negligence in the circumstances and liable for the nuisance.

LONDON ARMOURY CO., LTD. *v.* EVER READY CO. (GREAT BRITAIN) LTD., (1941) 1 All. E. R. 364 (K.B D.).

Trade Marks—Merchandise Marks Act (1926), S. 1—Imported goods bearing trade mark without indication of place of origin—No civil remedy available against the manufacturer—Criminal prosecution, only remedy.

The only remedy of an importer against the manufacturers for a breach of the provisions of the Merchandise Marks Act 1926, in failing to indicate the place of origin of imported goods bearing trade marks is by way of prosecution in a court of summary jurisdiction. No action for breach of statutory duty was maintainable.

BENSON *v.* NORTHERN IRELAND ROAD TRANSPORT BOARD (1942) 1 All. E. R. 465 (H.L.).

Criminal trial—Acquittal by court of summary jurisdiction "final"—Order for costs against prosecutor—If makes prosecutor a person aggrieved who could appeal—Order for costs—If one for payment of "penal or other sum."

Practice—Jurisdiction—Objection not taken—Duty of court.

When a court of summary jurisdiction dismisses a criminal charge, the order is final and the imposition of costs on the prosecution cannot create a right of appeal against such acquittal.

The order for costs cannot be said to be an order "for payment of any penal or other sum" within the meaning of that

phrase in The Summary Jurisdiction and Criminal Justice Act Northern Ireland, 1935, S. 24 (1) so as to make the order appealable.

If a court is itself satisfied that it has no jurisdiction, to entertain a case it is its duty to give effect to that view, taking if necessary the initiative upon itself.

GATWARD *v.* GATWARD, (1942) 1 All. E. R. 477 (P. D. A.)

Divorce—Desertion—Separation and maintenance order with non-cohabitation clause—Deletion of clause subsequently—If reconstitutes desertion.

The deletion of a non-cohabitation clause from a separation and maintenance order after it had been in full force for many years cannot automatically reconstitute desertion. There must be other evidence of overtures on the wife's part towards a resumption of cohabitation or of the husband's conduct to explain her not making any.

RE AMAND, (1942) 1 All.E.R. 480 (C.A).

Criminal Practice—Conscription by allied Government in England—Deserter—Arrest—Dismissal of application for issue of writ of habeas corpus—*Appeal incompetent as one relating to criminal matter.—Supreme Court of Judicature Act, 1925, S. 31.*

The dismissal of an application for the issue of a *writ of habeas corpus* by a person arrested as a deserter after conscription by an allied Government established in England, is an order on a criminal matter and an appeal is accordingly incompetent under the Supreme Court of Judicature (Consolidation) Act, 1925, S. 31.

DAWSON *v.* MUREX LTD., (1942) 1 All. E.R. 483 (C.A).

Tort—Factory—Accident due to patent defect in lifting tackle —Men engaged on the job at the time not called as witnesses— Evidence of expert witnesses—Value.

In an accident case the plaintiff is not called upon to prove precisely how the accident happened. Where neither side called any of the men engaged on the job when the accident, due to defect in the lifting tackle, took place in a factory and both sides relied on expert evidence, if the plaintiff's explanation is the more probable one, the Court can accept his case and find in his favour.

(1941) 2 All.E.R. 784 (affirmed).

MORGAN *v.* AYLEN, (1942) 1 All.E.R. 489 (K.B.D).

Tort—Negligence—Escort of child running into highway to save the child from danger—Injury from on-coming motor cycle —Contributory negligence—If can be defence.

A child escorted by the plaintiff ran forward to cross the road. The defendant at that moment was coming along on his motor cycle at a speed exceeding 23 miles per hour. Plaintiff ran out to save the child from being struck by the motor cycle. The defen-

dant cleared the child but struck the plaintiff and injured her. In a claim for damages,

Held, in the circumstances, the initial wrong was on the defendant who was approaching the cross road at too great a speed and was in law solely responsible for the accident. What the plaintiff did was a natural and proper thing to do and there was no contributory negligence on her part. The plaintiff was therefore entitled to damages.

CENTURY INSURANCE CO. LTD. *v.* NORTHERN IRELAND ROAD TRANSPORT BOARD, (1942) 1 All.E.R. 491 (H.L).

Tort—Negligence—Master and servant—Petrol tanker delivering petrol at garage—Driver lighting cigarette and throwing away match which started a fire—If act in course of employment.

The respondents were insured by the appellant company against liability to third parties arising from damage to property caused by the use by them of a petrol tanker belonging to the respondents. On Aug. 2, 1937, this tanker which was being driven by their employee, one *D*, had taken on board a consignment of 300 gallons of petrol at the Larne depot of Holmes Ltd. for delivery into the storage tank of one Catherwood, a garage proprietor of Belfast. *D* drove the tanker to Belfast backed it into Catherwood's garage, inserted the nozzle of the delivery hosepipe into the manhole of Catherwood's tank and turned on the stopcock at the side of the tanker into the tank. *D*, lighted a cigarette and threw away the match. The match ignited some material on the floor of the garage and a fire was caused forthwith where the nozzle of the delivery hose was discharging into the tank. The tanker was destroyed by an explosion. An adjoining house and a car were also destroyed and respondents had to pay damages. In a claim on the insurance it was contended that *D* was the servant of Holmes & Co. and not of the respondents by virtue of an agreement between them which provided *inter alia*, that all the employees of the respondent engaged in or about the delivery of petrol should accept and obey the orders of Holmes & Co, regarding such delivery, the payments of accounts and all matters incidental thereto, and that the respondents should dismiss any employee disregarding or failing to obey such orders. In the clause there followed a proviso that nothing in the clause should be taken as implying that such employees were in any way the employees of Holmes & Co.

Held: (i) The terms of the contract between the respondents and Holmes & Co did not involve the transfer of '*D*' to the service of Holmes & Co; (ii) the negligent act of *D* which caused the fire was done in the course of his employment by the respondents; and (iii) the respondents were accordingly entitled to claim from the appellants under their policy.

ROBINSON *v.* BAILEY, (1942) 1 All.E.R. 493 (Ch. D.)

Practice—Judgment—Debt not immediately payable—Property of value proportionate to debt to be charged.

Even though a debt is not immediately payable the court has jurisdiction to make a charging order in respect of it. But such

jurisdiction must be exercised with the greatest care, as a charging order for a debt not immediately payable is a form of execution. It will not be a proper exercise of jurisdiction to lock up a disproportionate amount of property to satisfy a small debt by reason of the apprehended failure of defendant to satisfy the terms of a judgment.

R. *v.* KEELING, (1942) 1 All. E. R. 507 (C.C.A.).

Criminal trial—Charge of having carnal knowledge of a girl of 8 years—Only evidence that of victim—Prisoner's silence—If can be deemed to be corroboration.

In a charge of having carnal knowledge of a girl of eight the only evidence was that of the victim and by virtue of the proviso to S. 38 of the Children and Young Persons Act, 1933, it was essential as a matter of law that the evidence should be corroborated by other material evidence. The conduct of the accused in not denying the charges in the following circumstances was relied on as affording the necessary corroboration. The circumstances were:—The police inspector saw the prisoner in the street and cautioned him in the usual way. He told him that he was not bound to make any statement and that he had a warrant for his arrest for having had carnal knowledge of *K* aged 8 years. To that the prisoner replied "I know what you mean, but not likely. She plays with the Sawbridge girl". The same evening the warrant was again read over to the accused who having been told that he need say nothing answered. "I have got you. Nothing to say". Again at the hearing before the Magistrates, after being cautioned that he was not obliged to say anything and that whatever he said would be taken down and given as evidence in the trial, he said "I am not guilty. I am going to say nothing." Lastly at the trial before the Judge having had the advantage of counsel's advice, he did not go into the witness box to give evidence.

Held, the conduct of the accused in the circumstances did not afford the necessary corroboration to support a conviction.

Re WARD, (1942) 1 All. E. R. 513 (Ch. D.).

Bankruptcy Act (1914), *S.* 69—*Surplus assets after payment in full to proving creditors—If can be subjected to a charging order in favour of creditors who did not prove.*

The word "creditors" in S. 69 of the Bankruptcy Act must be read as meaning only creditors who have proved in the bankruptcy and not those who after notice do not come in and prove their debts in the bankruptcy. Therefore, on all the creditors who have proved in the bankruptcy being paid in full with interest and costs, the balance of assets in the hands of the trustee is held in trust for the bankrupt and consequently is a fund in respect of which a charging order can be made at the instance of a non-proving creditor who had obtained a judgment after the adjudication of the bankrupt.

TRUSTEE IN BANKRUPTCY *v.* BOWRING HANBURY, (1942) 1 All. E. R. 516 (Ch. D.).

Limitation—Acknowledgment—Debt mentioned by debtor in Inland revenue affidavit and statement by debtor's solicitor to trustee in bankruptcy of creditor—If acknowledgment.

In June 1929 Mrs. B. H. repaid, out of the £10,000 lent to her, by her 'husband B. H. the sum of £1000. She died on March, 17, 1931 having by a will dated October 16, 1918 appointed her husband (B.H.), the defendant, her sole executor, and having after giving specific legacies and a pecuniary legacy, devised all the residue of her real and personal estate to the defendant absolutely. In his application for probate the defendant swore the usual Inland revenue affidavit in which he gave particulars of the estate of the deceased and in the list of debts due by the deceased was included the sum of £9000 due to B. H. (the defendant), Probate of the will was granted to the defendant on May 20, 1931, and on March 14, 1935 he was adjudicated a bankrupt. Thereupon this debt due to him from his wife vested in the trustee in bankruptcy. In June 1936 the solicitor for B. H. acting in his capacity as executor, wrote a letter to the trustee in bankruptcy mentioning with a statement of account that there was a possible claim for the £9000 the balance of the loan he had made to the deceased. In an action by the trustee in bankruptcy, *Held*, that the debt was time barred and neither the affidavit for probate nor the solicitor's letter constituted an acknowledgment of the debt as neither of them was made to the creditor or his agent nor did either of them constitute a promise to pay.

COPPIN AND OTHERS *v.* BUSH, (1942) 1 All. E. R. 516 (Ch.D.).

Practice—Collision case—Defendant and essential witness serving overseas in the war—If action to be stayed till their return.

A lorry driven by the defendant, an army driver in charge of it collided with a car belonging to one of the plaintiffs and carrying *C* and some friends or relatives who were with him. In an action by *C* and other persons injured in the accident, the Treasury Solicitor ultimately entered appearance for the defendant who was on active service abroad and asked for stay on the ground that the defendant and a material witness were out of jurisdiction on service.

Held, that the delay caused by such stay till return to England of the defendant and the witness will hold up the action indefinitely and was likely to cause grave injustice to the plaintiffs, and that accordingly such a stay should not be ordered.

ZURICH GENERAL ACCIDENT AND LIABILITY INSURANCE CO., LTD. *v.* MORRISON AND OTHERS, (1942) 1 All. E.R. 529 (C.A.).

Insurance—Misrepresentation or concealment of a material fact—Effect—Road Traffic Act (1934) *S.* 10.

Under the general law of insurance an insurer can avoid a policy if he proves that there has been misrepresentation or concealment of a material fact by the insured. What is material is that which would influence the mind of a prudent insurer in deciding whether to accept the risk or fix the premium. If this be proved, it is not necessary further to prove that the mind of the actual insurer was so affected. But under S. 10, Road Traffic Act (1934) the general law is modified and the insurer if he wishes to avoid the policy must establish (1) that the matter relied on was "material" in the sense that the mind of a prudent insurer would be affected by it, and (2) that in fact the underwriter's mind was so affected, and the policy was thereby obtained.

RE SMITH & FAWCETT, LTD., (1942) 1 All. E. R. 542 (C.A).

Companies—Shares—Transfer of shares—Refusal to register —Tests of bona fides.

Where the articles of association of a company confer a discretion on directors with regard to the acceptance of transfers of shares, the directors must exercise their discretion *bona fide,* in what they consider—not what a court may consider—to be in the interests of the company and not for any collateral purpose. A court will be averse to drawing inferences as to the *bona fides* or *mala fides* of persons merely on affidavit evidence. Where the directors have *bona fide* considered the interests of the company and come to the conclusion that it would be undesirable to register the transfer of some shares, the court cannot interfere.

MUMMERY *v.* MUMMERY: (1942) 1 All.E.R. 553 (P.D.A.)

Divorce—Desertion—Resumption of co-habitation—When interrupts statutory period.

The mere fact that marital relations between the spouses had taken place since the desertion does not constitute conclusive evidence of resumption of co-habitation so as to condone desertion and bring it to an end.

R. *v.* THE GENERAL MEDICAL COUNCIL: (1942) 1 All.E.R. 568 (K.B.D).

Medical Council—Erasure of name from register on the ground that member was found by Court guilty of adultery—Council if bound to hear other evidence in the inquiry.

The Medical Act (1858), S. 29 required a "due inquiry before the erasure of the name of a member from the register of the Medical Council. The Council on the finding of the Divorce Court that a member was guilty of adultery removed his name refusing to hear other evidence adduced by him.

Held, (Singleton, J., dissenting) that the refusal did not prevent there being "due inquiry" as required by the Act. The Council was entitled to accept the finding arrived at after full investigation by a competent court without any fresh hearing.

RE: WOOLGAR, WOOLGAR *v.* HOPKINS: (1942) 1 All. E. R. 583 (Ch. D).

Executor—Administration action—Arrears of alimony due to widow—If recoverable in administration action.

Arrears of alimony due to the widow are not recoverable in the administration of the deceased's estate and the widow cannot therefore maintain an action for administration.

JOTTINGS AND CUTTINGS.

Dock Briefs.—Work must have been plentiful at the Surrey Quarter Sessions at Kingston, since the appearance of a prisoner asking for a dock brief caused a general exodus on the part of the barristers present, leaving him only two to choose from. When the other counsel returned, the chairman observed that the retreat was not in accordance with the best traditions of the Bar, but a spokesman on their behalf relied on a ruling by the late Recorder of London and added that senior men went out of Court to give their juniors a chance to accept dock briefs. Perhaps they were also afraid of forming undesirable acquaintances. Lord Justice Bankes, at his farewell dinner in Inner Temple Hall, recalled how once when he was staying in the country with his father-in-law a ragged man at the kitchen door greeted him with: "How do you do, Mr. Bankes?" and added "Don't you remember that little affair with the fowls at Crewe?" He was a dock brief client from the long distant past. Sir Harold Morris, K.C., recalled his first dock brief at the Old Bailey, which was "Hobson's choice" for the prisoner, as the only other barrister in court was going to prosecute. The charge was stealing a pair of boots, and assisted by his client's pronounced stammer he got him off on the ground of mistaken identity. Afterwards he noticed that one of the coins constituting his fee was a half franc piece. The presence of lady barristers introduces more confusion into the dock brief lottery and a little while ago at the Old Bailey two prisoners running said: "I'll have that gentleman," pointing to a lady.—*S.J., 1942, p. 173.*

The Brains Trust Again.—In its session on 9th June the "Brains Trust" was called upon to give its impromptu opinion on two legal matters one a matter of opinion and the other a matter of fact. The first arose out of a question whether a simplified statute book or every man's lawyer could be devised, for the "Man in the street" to understand. One member of the trust thought that Haldane's (*sic*) "Laws of England" fulfilled the necessary requirements, but was careful to point out the dangers of over-simplified law which have often been stressed in these columns. Sir William Beveridge was not at all hopeful of the possibility of reducing the laws of England into the compass of a single book. Human life, he said, is not simple; it is complicated. "Good is one but evil is multiform," and Sir William said that you cannot have a simple statement of law which does not cause greater trouble than it is worth. He said that the Citizen's Advice Bureaux fulfilled a need in this respect, and another speaker mentioned the

"Poor Man's Lawyer," There are, in fact, several small books in existence, such as Professor Geldart's "Elements of English Law," the late Professor Jenks's "Book of English Law", and an excellently simple work by the late Judge Ruegg, which can form the ground-work for a layman's painful first steps in comprehending the law of the country in which he lives. The extent of the ignorance of the average layman of matters which are commonplace knowledge among lawyers was illustrated by the answers of the "Trust" to a question put by a person who had recently been called to serve on the jury at the Central Criminal Court. He was anxious to know what different functions the High Court Judge, the Recorder, the Common Serjeant and the Judge of the City of London Court fulfilled at that Court. The Trust hazarded what the question master called a number of brilliant conjectures in which the general view seems to have been that each Judge was a specialist in his particular field. The facts are that all the four Judges have technical equality in jurisdiction under S. 2 of the Central Criminal Court Act, 1834, which they share with several other dignitaries, such as the Lord Mayor of the City of London, the Lord Chancellor, the Dean of Arches, the Aldermen of the City of London, and ex-Lord Chancellors and ex-High Court Judges. As a matter of practice, the High Court Judge tries murder, manslaughter and certain other serious cases, while the Recorder, the Common Serjeant and the Judge of the City of London Court, who alone try the other cases, have no special tasks allotted them. The Judge of the City of London Court is usually referred to as the Commissioner, and he, like the Common Serjeant and the Recorder, is paid by the City Corporation. The story goes that Mr. Commissioner Kerr, the first Judge of the City of London Court to be so appointed, was at first paid ten guineas a day for his work, but when the work increased he demanded and received a salary of substantial proportions. This continued although the work fell off, but when it increased again, Mr. Commissioner Kerr asked for and received a further increase of salary. This Judge evidently knew his worth and valued his words accordingly, his typical summing up being, "Ye've heard the evidence. Consider your verdict!" The Judges of the Old Bailey today are of a different calibre and deserve to be better known.—*S.J., 1942, p. 177.*

To-day and Yesterday.—On the 7th July, 1869, Sir Hardinge Giffard (afterwards Lord Halsbury) appeared at Marlborough Street Police Court to defend Lord Carrington, charged with assaulting Granville Murray, editor and proprietor of a scandalous journal called "The Queen's Messenger," which had published an abominable libel on his father. The Earl had publicly horse-whipped Murray and now set out to prove that he was the actual author of the article, After much conflicting evidence the magistrate announced an adjournment. Immediately some of Murray's friends made a rush for a box alleged to contain manuscripts stolen from the paper's offices. "Around that box there raged for nearly a quarter of an hour a fight as fierce and fell as that for the body of Patroclus . . . Noble lords, eminent Queen's Counsel, solicitors, clerks, witnesses to the number of thirty or forty were engaged in that desperate melee

. . . Hats were smashed, eyes blackened, noses set bleeding, glasses broken, inkstands hurled to and fro till at last a strong body of police quelled the riot." Sir Hardinge Giffard fought vigorously in the thick of it while the magistrate watched horror stricken from the Bench.—*S.J., 1942, p. 194.*

BOOK REVIEWS.

"THE MIND AND FACE OF NAZI GERMANY", by Prof. N. Gangulee, (John Murray, 5s.),

The book under review presents in the very *ipse dixit* of the Nazi protagonists a grim picture of the soulless philosophy which, crushing all perennial moral values as under a juggernaut wheel, and snuffing out altogether the eternal verities of existence, has made the Germany of today the horror of the entire civilized world. National Socialism, under the baleful influence of which the garnered fruits as well as the potential germs of the unfettered human spirit are sought to be sacrificed on the altar of an insensate megalomaniac ambition, is here described in all its ramifications.

As Dr. Wellington Koo has observed, the book gives a composite picture of the thoughts and beliefs, the ideas and ideals, the aspirations and ambitions of the Nazi hierarchy in Germany.

One shudders to read statements like the following: "God has manifested itself not in Jesus Christ but in Adolf Hitler," "Let Christ rot—and the Hitler Youth march." One rubs one's eyes and wonders whether Anti-Christ has not come out into open at last.

It will be a revelation to many to find that the German-Nordic religion is a direct unblushing negation of the doctrines of the Church. "Conscience is a Jewish invention" and "Mercy is an un-German conception"!

The pervasive features of Nazidom—its absurd myth of race-superiority, its unthinking anti-Semitism, its eradication of all human values, its glorification of war, and its "antiquarian gospel of malignant tyranny"—all these are well portrayed in the very language of its hierophants.

It is indeed a happy inspiration of the author to present the matter in the shape of an anthology, for there can be no more crushing indictment of Nazism than that its protagonists stand condemned out of their own mouths.

"INDIAN COMPANY RULES AND FORMS", by Lakshmi Narain Mehra.

This handy little book brings to the reader in compact form the latest rules under the Indian Companies Act, and a number of new forms useful for people who have anything to do in connection with companies. The budding company director will find in this book an easy *vade mecum.* The footnotes furnish very practical hints, and give helpful information on the day-to-day routine of company management.